



ORDERED in the Southern District of Florida on December 23, 2024.

A handwritten signature in cursive script that reads "Coral Lopez-Castro".

Corali Lopez-Castro, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

IN RE:

Mario Mirabal,
Debtor.

CASE NO. 23-20131-CLC

Chapter 13

_____/

Mario Mirabal,
Plaintiff,

ADV. PRO. NO. 24-01418-CLC

vs.

Deutsche Bank National Trust Company,
Defendant.

_____/

ORDER GRANTING MOTION TO DISMISS

THIS MATTER came before this Court for a hearing on December 12, 2024 upon the Motion to Dismiss [ECF No. 11] (the “Motion to Dismiss”) filed by Deutsche Bank National

Trust Company in its capacity as Trustee for Indymac INDX Mortgage Loan Trust 2007-AR5, Mortgage Pass-Through Certificate Series 2007-AR5 (“Deutsche”) seeking to dismiss the Complaint [ECF No. 1] (“Complaint”) filed by the debtor, Mario Mirabal (the “Debtor”), and the Debtor’s Response to Motion to Dismiss [ECF No. 17]. The Court, having considered the Complaint, the Motion to Dismiss, the Response, the extensive arguments of counsel and Plaintiff at the hearing, and the record in this case, finds as follows:

1. The Complaint requests that this Court declare the assignment of mortgage “void and unenforceable,” and determine that the Defendant lacks standing in the State Court foreclosure action to enforce the Mortgage.¹ [Complaint, p. 9]. The Court notes that the State Court, and not this Court, is typically the appropriate venue in which to address issues related to standing to enforce a mortgage or the enforceability of an assignment of mortgage, especially where the issues are already pending before, or had been addressed by, a state court. The Debtor has been litigating with Deutsche for some time before the Debtor filed the Complaint. He is dissatisfied with the outcome in State Court and seeks to relitigate the issues in this Court. These claims, however, do not belong in the bankruptcy court, especially where the Debtor’s main case has already been dismissed. [Main Case ECF No. 136]. Courts generally favor dismissal of an adversary proceeding upon dismissal of the main bankruptcy case. See *Fid. & Dep. Co. of Md. v. Morris* (In re Morris), 950 F.2d 1531, 1534 (11th Cir. 1992) (“[T]he general rule favors dismissal,” but courts may retain jurisdiction for cause).

2. The Court also notes, and the Debtor cannot dispute, that he is not the borrower under the Note or Mortgage identified in the Complaint. [Complaint, p. 1-2]. In addition, the property at issue in this case has been the subject of much litigation, and this Court previously entered an Order granting KP Investments Miami, LLC (“KP Investments”) relief from the

¹ Capitalized Terms used but not defined herein shall have the meaning ascribed to them in the Motion to Dismiss.

automatic stay to enforce the Final Summary Judgment in State Court. *See* Order Granting KP Investments Miami, LLC's Motion for Relief from Stay [Main Case ECF No. 87]. And, based on the KP Investment's recent filings [Main Case ECF No. 135], it appears that the Final Summary Judgment was enforced and KP Investments obtained title to the Property.

3. The Court agrees that the Debtor lacks standing to challenge the Assignment of Mortgage, or the Pooling and Servicing Agreement identified in the Complaint as he is not a party to or a beneficiary of either instrument. *See HSBC Bank USA, Nat'l Ass'n v. Buset*, 241 So. 3d 882, 890, 91 (Fla. 3d DCA 2018), (finding the debtors lacked standing to challenge the pooling and servicing agreement because they were neither parties to nor beneficiaries of such instruments). Furthermore, the foreclosure action that was pending in the State Court based upon the Note and Mortgage identified in the Complaint, has been dismissed so there is no live controversy as to the Note, Mortgage, Assignment of Mortgage or Pooling and Servicing Agreement. [ECF No. 20, Pages 5-8].

4. Cause simply does not exist to retain jurisdiction over this adversary proceeding. Accordingly, the Motion is GRANTED, and the Plaintiff's Complaint is DISMISSED.

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Copies furnished to:

Ari Newman, Esq. Counsel to Defendant Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500 Email: newmanar@gtlaw.com

(Attorney Ari Newman shall mail a conformed copy of this Order upon all interested parties and shall file a certificate of service)